

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1086 OF 2018**

**DISTRICT : N' MUMBAI**

Smt. Smita Bharat Jadhav. )  
Age : 49 Yrs., Working as Police Inspector )  
Incharge and residing at Marmaid 2, Sector 11, )  
Plot – 52, CBD, Belapur. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Addl. Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )

2. Commissioner of Police. )  
New Mumbai. )

3. Shri Tanvir Ahmad Shaikh. )  
Police Inspector, Presently posted as )  
Incharge of NRI Police Station, )  
New Mumbai. )...**Respondents**

**Mrs. Puna Mahajan, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER-J**

**DATE : 27.03.2019**

**JUDGMENT**

1. In the present Original Application, the challenge is to the transfer order dated 07.12.2018 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant was posted as Police Inspector at NRI Police Station, Navi Mumbai since 03.08.2017 and has not completed her normal tenure till the passing of impugned order dated 07.12.2018. By impugned order dated 07.12.2018, the Applicant has been transferred from NRI Police Station to CIDCO Encroachment Department, Navi Mumbai purportedly exercising the power under Section 22-N(2) of Maharashtra Police Act, 2015 on administrative ground and Respondent No.3 has been posted in her place. The Applicant has challenged the impugned transfer order contending that she had completed only one year and three months at NRI Police Station and was not due for transfer. The alleged ground of alleged corruption does not fall within the power of Respondent No.2 (Commissioner of Police) as such power vests with the State Government only as contemplated in Section 22-N(1) of Maharashtra Police Act, 2015, and therefore, the transfer of the Applicant is not sustainable in law. The Applicant, therefore, contends that no case is made out to transfer the Applicant by Police Establishment Board (PEB) under Section 22-N(2) of Maharashtra Police Act, 2015, and the transfer is illegal. Furthermore, there is no compliance of the instructions given in Circular dated 07.10.2016 which requires preliminary enquiry and observance of principles of natural justice for transfer of Police Personnel on the ground of complaint. With this pleading, the Applicant contends that the impugned order dated 07.12.2018 is not sustainable in law and facts and prayed to quash the same.

3. The Respondent No.2 resisted the application by filing Affidavit-in-reply (Page Nos.37 to 41 of Paper Book) *inter-alia* denying that the impugned transfer order suffers from any illegality. It is not in dispute that the Applicant has not completed normal tenure at NRI Police Station. The Respondent sought to justify the impugned transfer order on the ground of allegation of corruption made by complainant Smt. Kulsum Yusuf. Shaikh, Owner of Beauty Parlor, Navi Mumbai

and proposed departmental enquiry (D.E.). In this behalf, the Respondent contends that on 10.07.2018, Smt. Shaikh lodged report with Anti-Corruption Bureau, Thane alleging that on 03.07.2018, Applicant called her in NRI Police Station and threatened her that she is running illicit business in her Beauty Parlor and demanded bribe of Rs.35,000/- p.m., else Beautyl Parlor will be closed. In view of the report of Smt. Shaikh, the Anti-Corruption Bureau, Thane made preliminary enquiry and verified the allegation of demand of bribe. In preliminary enquiry, the allegations made by Smt. Shaikh found substantiated. Therefore, Anti-Corruption Bureau sent report dated 13.11.2018 to Police Commissioner, Navi Mumbai giving details of enquiry conducted by it and also asked Commissioner of Police to initiate departmental action against the Applicant. It is on this background, the matter was placed before PEB in the meeting on 07.12.2018 and in view of the report of Anti-Corruption Bureau, PEB exercising power under Section 22-N read with 22-N(2) of Maharashtra Police Act, 2015 transferred the Applicant from NRI Police Station to CIDCO Encroachment Department on administrative ground. The Respondent, therefore, contends that the transfer is in compliance of Section 22(1)(C) and 22-N(2) of Maharashtra Police Act, 2015. With this pleading, the Respondent prayed to dismiss the application.

4. Smt. Punam Mahajan, learned Advocate for the Applicant sought to assail impugned transfer order contending that it is stigmatic being based on false allegation of corruption, and therefore, it being punitive not sustainable in law. She further sought to contend that, in case of necessity of transfer on the ground of allegation of corruption or D.E. in this behalf, the powers of transfer vests with the State Government and not with PEB. She, therefore, contends that the transfer is not in consonance with Section 22-N of Maharashtra Police Act.

5. Learned Advocate for the Applicant placed reliance on the decisions rendered by this Tribunal and Hon'ble High Court. In **O.A.No.609/2015**

**(Rajendra Todkar Vs. State of Maharashtra) decided on 10.03.2016**, it has been held that mere complaint unless enquired into, is not sufficient to hold person guilty of dereliction in duties and on that ground, the transfer was found in violation of the provisions of Section 22-N of Maharashtra Police Act. Reference was also made to the decision rendered by this Tribunal in **O.A.No.466/2016 (Arun Pawar Vs. State of Maharashtra) decided on 12.07.2016**. In that case, the transfer was made on the ground of incompetency, poor performance and undesirability of the Police Official and the approval of PEB was found unsustainable in law due to absence of Chairman of the Board in the meeting. The learned Advocate for the Applicant further referred to the Judgment passed by this Tribunal in **O.A.861/2018 (Rajendrakumar Trivedi Vs. Government of Maharashtra) dated 28.11.2018** wherein the challenge was to the transfer of Assistant Commissioner of Police out of Commissionerate area and the defence that it amounts to internal shifting and not transfer has been rejected and the sanction of highest Competent Authority being taken ex-post-facto, the O.A. came to be allowed. In **Writ Petition No.7960/2011 (Harish Bajjal Vs. State of Maharashtra) decided by Hon'ble High Court on 21.11.2011**, the challenge was to the transfer of Police Official under the provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as "Transfer Act 2005"). In the said matter, alleged complaints which were the grounds for transfer was found not substantiated, and therefore, the transfer was found punitive and suffers from malice in law. In fact situation, the impugned transfer order was set aside. Lastly, reference was also made to the decision of Hon'ble High Court reported in **2015 (2) MLJ 679 (State of Maharashtra Vs. Dr.(Ms.) Padmashri S. Bainade)**. It relates to the transfer of Government servant under the provisions of 'Transfer Act 2005' and no reasons were assigned for mid-term transfer and accordingly, in fact situation, the transfer order has been set aside.

6. Needless to mention that, every decision is the outcome of assessment of facts in totality *vis-à-vis* legal principles applicable to the facts. Therefore, even single additional fact or variance in the factual situation may make a lot of difference in the precedential value of a decision. It has said long ago that a case is a authority for what it actually decides and not what logically follows from it. This being the settled position of law, the present matter needs to be decided on the basis of facts emerging on record in the light of provisions of 'Maharashtra Police Act 2015'.

7. Per contra, Shri A.J. Chougule, learned Presenting Officer submitted that the transfer of the Applicant was found necessary in public interest as well as on administrative exigencies in view of complaint lodged by Smt. Shaikh attributing allegation of demand of bribe by the Applicant which was verified by Anti-Corruption Bureau and found substantiated. He, therefore, urged that the decision of PEB is in consonance with provisions of Section 22-N(2) of Maharashtra Police Act and the submission advanced by the learned Advocate for the Applicant that the State Government is only empowered in this behalf is misconceived.

8. Needless to mention that the Government servant holding a transferable post has no vested right to remain posted at one place and Courts or Tribunals should not interfere with the transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any statutory rule or on the ground of *malafides*. It is also well settled that it is for the appropriate authority to decide who should be transferred at particular place and unless the transfer order is vitiated by *malafides* or is made in violation of any statutory provisions, the Court or Tribunal should not interfere with it.

9. Now, turning to the facts of the present case, the transfer has been effected in view of the complaint lodged by Smt. Shaikh alleging that the Applicant had demanded bribe to her. In this behalf, the perusal of complaint lodged by Smt. Shaikh dated 10.07.2018 (Page No.60 of P.B.) reveals that she runs Orange Beautiful Parlor in Navi Mumbai. On 03.07.2018, the Applicant had visited her Salon and threatened the complainant that she is running illicit business in the Parlor and if she wants to continue the same, she will have to pay bribe of Rs.35,000/- p.m. else Salon will be closed down. This was the complaint lodged with Anti-Corruption Bureau, Thane. In pursuance of it, P.I. Smt. Raskar, Anti-Corruption Bureau immediately proceeded to hold enquiry and verification of the demand of bribe. She accordingly called two Panchas and again sent complainant to the Navi Mumbai Police Station equipped with Voice-Recorder to record the demand of bribe. Accordingly, the complainant met the Applicant in her chamber and following was the conversation.

तक्रारदार श्रीमती शेख	जाऊ क्या मॅम के इधर ....
पो. स्टे. मधील कर्मचारी	कोई है ना ....
तक्रारदार श्रीमती शेख	कोई नहीं है .....
पो. स्टे. मधील कर्मचारी	पुछो पहले ....
तक्रारदार श्रीमती शेख	पुछूँ.....
पो. स्टे. मधील कर्मचारी	आप पहले पुछो .... आऊ क्या मॅम.....
तक्रारदार श्रीमती शेख	हाँ ..... मॅम मैं अंदर आऊ .... मॅम सर आये थे दुकान पे .... मेरेको इतना नहीं हो रहा मॅम ....
लोकसेवक श्रीमती जाधव	क्या ....
तक्रारदार श्रीमती शेख	पेमेंट ....
लोकसेवक श्रीमती जाधव	आं ....
तक्रारदार श्रीमती शेख	जो आप बोले थे ना ....पेमेंट देनेके लिये ....
लोकसेवक श्रीमती जाधव	हाँ ....
तक्रारदार श्रीमती शेख	ते उतना नहीं हो रहा है मॅम ....
लोकसेवक श्रीमती जाधव	अरे तो .... डायरेक्टली आप मेरे पास कैसे आते हो आप लोग ....
तक्रारदार श्रीमती शेख	मैं बोली आपसे डायरेक्ट बात करूंगी तो अच्छा रहेगा ....
लोकसेवक श्रीमती जाधव	पहले उन से बात करो ना....वो आपको बोलेंगे पहले सब... आप डायरेक्टली कैसे आते हो... आप उनसे बात करो ....
तक्रारदार श्रीमती शेख	ठिक है ....

तक्रारदार यांनी लोकसेवक श्री. घोडे यांना त्यांचे मोबाईलवरून फोन लावला. परंतु लोकसेवक यांनी सदरचा कॉल रिसिड्द केलेला नाही.

10. Accordingly, the detail Panchanama about the verification of demand of bribe was prepared, the copies of which are on record (Page Nos.61 to 72 of P.B.). It appears that, thereafter, ACB tried to record the conversation between Shri Ghode, whose name was figured in the conversation recorded in the evening of 10.07.2018 as reproduced above. Thus, as per report of ACB, the Applicant had asked complainant Smt. Shaikh, first to contact Shri Ghode, which was in the context of (पहले उनसें बात करो ना ....वो आपको बोलेंगे). However, it seems later Shri Ghode got alert and did not pick phone call of complainant Shri Shaikh. As there was no further verification or corroboration to the demand of bribe, the ACB closed the enquiry and submitted the report (Page Nos.57 to 59 of P.B.) to Police Commissioner, Navi Mumbai giving details of the enquiry conducted by ACB and also asked Police Commissioner to initiate D.E. against the Applicant.

11. As such, this is not a case where transfer is based upon anonymous complaint or unsubstantiated complaint. The allegation of demand of bribe was verified and substance was found therein in view of conversation between the Applicant and complainant Smt. Shaikh as reproduced above.

12. True, the ACB could not take-up the matter to the logical conclusion, as enquiry was closed after recording the statement of complainant afresh on 18.07.2018.

13. The learned Advocate for the Applicant sought to contend that the complainant in her statement recorded on 18.07.2018 gave clean chit to the Applicant. Her submission is fallacious and not acceptable. The relevant portion from the statement of complainant Smt. Shaikh dated 19.07.2018 is as follows :

“सदर तक्रारीच्या अनुषंगाने दि. १०/७/२०१८ रोजी मी श्रीमती जाधव, NRI पोलीस स्टेशन यांना त्यांचे कार्यालयात भेटणेकामी गेले असता श्रीमती जाधव यांनी माझेकडे कोणत्याही लाचेची मागणी केलेली नाही. परंतु सदर बाबत त्यांनी मला NRI पोलीस स्टेशनचे पोलीस हवालदार श्री. घोडे यांचेशी चर्चा करणेस सांगितले असता श्री. घोडे यांचे मोबाईलवर फोन लावला. परंतु श्री. घोडे यांनी संपूर्ण रिंग वाजल्यानंतर माझा फोन उचलला नाही. त्यानंतर श्री. घोडे यांना वारंवार फोन लावला परंतु श्री. घोडे यांचा प्रत्येकवेळी फोन व्यस्त असल्याने सदरची कारवाई दि. ११/७/२०१८ रोजी आयोजित करण्याचा निर्णय घेतला.”

14. If one go through the entire statement of Smt. Shaikh, it cannot be said that the allegations of demand of bribe were withdrawn by the complainant. All that she stated that it is only in conversation which took place in NRI Police Station, there was no direct demand of bribe, which is an admitted position in view of conversation recorded in Voice-Recorder by ACB. As per the procedure, the ACB wanted confirmation of demand of bribe directly from the mouth of the Applicant, but it seems to be not materialized. The perusal of report submitted by ACB reveals that the allegations made by complainant were not unfounded but for want of corroboration to the demand of bribe, no further action to book the Applicant under the provisions of Prevention of Corruption Act could be taken. As such, merely because the complaint filed by Smt. Shaikh was not culminated into registration of FIR, it cannot be said that the allegations were totally unfounded. At any rate, in the opinion of PEB, the allegations in view of detail report submitted by ACB was found enough to transfer the Applicant invoking Section 22-N(2) of Maharashtra Police Act, 2015. Where integrity of the Officer which is of utmost importance in public administration found doubtful, the public interest must prevail as envisaged in Section 22-N(2) of 'Maharashtra Police Act 2015'.

15. At this juncture, it would be useful to refer Section 22-N of Maharashtra Police Act, which is as follows :-

**“22N.** Normal tenure of Police Personnel, and Competent Authority [(1) Police Officers in the Police Force shall have a normal tenure as mentioned below, subject to the promotion or superannuation:-



- (a) for Police Personnel of and above the rank of Deputy Superintendent of Police or Assistant Commissioner of Police a normal tenure shall be of two years at one place of posting;
- (b) for Police Constabulary a normal tenure shall be of five years at one place of posting;
- (c) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector a normal tenure shall be of two years at a Police Station or Branch, four years in a District and eight years in a Range, however, for the Local Crime Branch and Special Branch in a District and the Crime Branch and Special Branch in a Commissionerate, a normal tenure shall be of three years;
- (d) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector a normal tenure shall be of six years at Commissionerate other than Mumbai, and eight years at Mumbai Commissionerate;
- (e) for Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector in Specialized Agencies a normal tenure shall be of three years.]

The Competent Authority for the general transfer shall be as follows, namely :-

<b>Police Personnel</b>		<b>Competent Authority</b>	
(a)	Officers of the Indian Police Service.	....	Chief Minister
(b)	Maharashtra Police Service Officers of and above the rank of Deputy Superintendent of Police.	....	Home Minister
(c)	Officers up to Police Inspector	....	(a) Police Establishment Board No.2. (b) Police Establishment Board at Range Level (c) Police Establishment Board at Commissionerate Level. [(d) Police Establishment Board at District Level

- (e) Police Establishment Board at the Level of Specialized Agency]:

Provided that, the State Government may transfer any Police Personnel prior to the completion of his normal tenure, if,-

- (a) disciplinary proceedings are instituted or contemplated against the Police Personnel; or
- (b) the Police Personnel is convicted by a court of law; or
- (c) there are allegations of corruption against the Police Personnel; or
- (d) the Police Personnel is otherwise incapacitated from discharging his responsibility; or
- (e) the Police Personnel is guilty of dereliction of duty.

(2) In addition to the grounds mentioned in sub-section (1), in exceptional cases, in public interest and on account of administrative exigencies, the Competent Authority shall make mid-term transfer of any Police Personnel of the Police Force :

[\* \* \*]

[Explanation.- For the purposes of this sub-section, the expression "Competent Authority" shall mean :-

	<b>Police Personnel</b>		<b>Competent Authority</b>
(a)	Officers of the Indian Police Service.	....	Chief Minister;
(b)	Maharashtra Police Service Officers of and above the rank of Deputy Superintendent of Police	....	Home Minister;
(c)	Police Personnel up to the rank of Police Inspector for transfer out of the respective Range or Commissionerate or Specialized Agency	....	Police Establishment Board No.2;
(d)	Police Personnel up to the rank of Police Inspector for transfer within the respective Range,	....	Police Establishment Boards at the Level of Range, Commissionerate or

	Commissionerate or Specialized Agency	Specialized Agency, as the case may be;
(e)	Police Personnel up to the rank ... of Police Inspector for transfer within the District.	Police Establishment Board at District Level.

Provided that, in case of any serious complaint, irregularity, law and order problem the highest Competent Authority can make the transfer of any Police Personnel without any recommendation of the concerned Police Establishment Board.]”

16. As such, under Section 22-N(2) of Maharashtra Police Act, in exceptional cases, in public interest and on account of administrative exigencies, the competent authority is empowered to transfer mid-term or mid-tenure of Police Personnel.

17. The perusal of minutes of PEB (Page No.85 of P.B.) reveals that the PEB pondered over the report submitted by ACB dated 27.11.2018 and thought it appropriate to transfer the Applicant from NRI Police Station to CIDCO Encroachment Department, Navi Mumbai invoking Section 22-N(1) and 22-N(2) of Maharashtra Police Act, 2015 on administrative ground and exigency. In the present matter, the administrative exigency or ground is in the context of allegation of demand of bribe by the Applicant in view of detail report submitted by ACB.

18. Smt. Mahajan, learned Advocate for the Applicant was much harping upon the first proviso to Section 22-N of Maharashtra Police Act which empowers State Government to transfer any Police Personnel prior to completion of his normal tenure in various situations covered in Clauses (a) and (e). Clause (c) pertains to the allegation of corruption against the Police Personnel. It was sought to contend that the powers lies with the State Government to transfer the Police Personnel on the allegation of corruption and PEB is not competent to transfer the Applicant on this ground. Though this submission at first instance appears

attractive, it has no leg to stand on dipper scrutiny from the proper perspective in the context of the present facts.

19. As state above, Section 22-N(2) empowers PEB to transfer Police Personnel mid-term in exceptional cases in public interest and on account of administrative exigencies. In minutes recorded by PEB, there is specific reference of invoking power under Section 22-N(2) of Maharashtra Police Act. This needs to be read and understood in the context of facts disclosed in the detailed report submitted by ACB. The ACB *prima-facie* finds substance in the allegations made by the complainant Smt. Shaikh, albeit, the trap could not be laid for want of further corroboration in verification process. The conversation recorded in the evening of 10.07.2018 in verification Panchanama as reproduced above, *prima-facie* supports the complaint made by Smt. Shaikh on 10.07.2018. This being the position, the decision of PEB to shift the Applicant in public interest can hardly be faulted with.

20. In view of above, reliance placed by the learned Advocate for the Applicant on the Judgment of Hon'ble Supreme Court in **(2009) 2 SCC 592 (Somesh Tiwari Vs. Union of India)** is misplaced. In that case, the transfer was found passed on material which was non-existent and held punitive. It is in that context, the Hon'ble Supreme Court held such transfers suffers from malice in law. In the present case, the enquiry was conducted by ACB and the complaint lodged by Smt. Shaikh was not found without substance. Therefore, this Judgment is of no assistance to the learned Advocate for the Applicant.

21. In so far as non-compliance of Circular dated 07.10.2016 (Page No.30 of P.B.) issued by Director General of Police is concerned, it speaks about the procedure to be followed in case where transfer is necessitated on complaint. As per this Circular, it is necessary to conduct preliminary enquiry before transfer of

Police Personnel. In the present, in view of enquiry conducted by ACB, it cannot be said that there is absence of enquiry.

22. Lastly, feeble attempt was made by the learned Advocate for the Applicant to show that, because of registration of offence against Beauty Parlor of the complainant on 21.06.2018, the complainant had axe to grind against the Applicant. The copy of FIR under Sections 294, 114 and 34 of Indian Penal Code is placed on record at Page Nos.93 to 98 of P.B. It has been explained by the learned Presenting Officer that the said offence was registered by Crime Branch and it has nothing to do with NRI Police Station. Apart, in view of report submitted by ACB showing *prima-facie* substance in the allegation made by the complainant Smt. Shaikh, it is not possible to say that the Applicant has been victimized due to registration of crime referred to above.

23. Shri A.J. Chougule, learned P.O. rightly referred to the decision of Hon'ble High Court in ***Writ Petition No.6809/2017 (Vazeer H. Shaikh Vs. State of Maharashtra) decided on 15<sup>th</sup> November, 2017.*** In this matter, the PEB had approved local transfer of Police Personnel on the ground of administrative exigency and public interest, it was assailed in O.A, which came to be dismissed. In Para No.16, the Hon'ble High Court held as follows :

*“16. On reading of the provision and in view of the material placed before us, we are of the opinion that though, the transfer order refers the only ground of administrative exigency, the material placed before us also satisfies the other ground i.e. public interest. We are unable to accept the submission of the learned Counsel that while effecting transfer under Section 22N(2), it is necessary to meet all the three grounds namely exceptional case, public interest and administrative exigency. In our opinion, an exceptional case itself would be a ground in certain cases and there may not be the requirement of satisfying other two grounds.”*

24. In the above matter, the Police Personnel was transferred to Traffic Branch from the point of administrative exigencies as his posting in Traffic branch was

found necessary to regulate the traffic and it comes within the ambit of public interest.

25. I must make it clear that the observation made by this Tribunal in the Judgment about the allegation of demand of bribe and the report of ACB is examined only to the extent of legality of transfer order.

26. The necessary corollary of aforesaid discussion leads me to conclude that the impugned transfer order is in consonance with the requirement of Section 22-N(2) of Maharashtra Police Act and it does not suffer from any malice or illegality. The challenge to the transfer order is, therefore, devoid of merit and O.A. deserves to be dismissed. Hence, the following order.

### **ORDER**

The Original Application is dismissed with no order as to costs.

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai  
Date : 27.03.2019  
Dictation taken by :  
S.K. Wamanse.